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Academic Leadership Journal

Background Checks and Fingerprinting in Public School Systems

(Part III)

Mindy Salmans

Two events specific to this study occurred in 1999, 1) the National Crime Prevention and Privacy Compact became effective which provided reciprocity among the states to share records without charging each other for the information, and 2) all 50 states and the District of Columbia were finally members of the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse which collects information concerning the status of educational certificates and can then share (reciprocate) this information to any interested member of the NASDTEC Clearinghouse. The purpose of this study was to determine whether reciprocity among the 50 states and the District of Columbia had caused an increase in certificate sanctions such as revocation, suspension or denial. By 1999, many states were also including fingerprinting in their criminal history background checks, but some states still were not. There were concerns among some teachers, school districts, and states that the cost of fingerprinting was too great, the time constraints of such checks were too great and fingerprints infringed on one's privacy. A graduate wanting to receive a teaching certificate in both Kansas and Missouri would have to pay for and go through the fingerprinting process in both states, within days of each other. The fingerprinting process is not reciprocated; however, information received from the national criminal search as a result of the fingerprinting process is reciprocated.

There were no studies found similar to this study. Therefore, the request for information concerning educator certificate sanctions was basic—a starting point. This study gathered educator certificate sanction information from State Departments of Education in the United States to determine if reciprocity among states that occurred in 1999 was related to an increase in the number of yearly certificate sanctions. Information concerning certificate sanctions was also obtained from the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse from the years 2001-2002, and 2003-2004.

States were asked to provide data spanning a 10 year period, 1993 to 2002. Thirty states (including the District of Columbia) responded from the 51 requests for information—a return rate of 59%. Information received was not complete in all cases; in fact, a couple of states responded by saying more information would follow, but those states never provided the additional information. It was discovered that not all states report, collect, or keep information in the same manner. Data from the NASDTEC Clearinghouse was helpful by showing whether or not all states require fingerprinting, and if they do so at the time of certification, employment, or both. But, on a regular basis, the Clearinghouse does not collect specific information concerning the type of certificate sanctions, the number of sanctions, nor the reason for the sanctions in each state. State departments can access a database to search if an applicant has a sanction against his/her certificate, but the Clearinghouse does not collect the specific information needed for this study.

Data from the NASDTEC Clearinghouse was used in 2002 as well as 2004 for this study. During those

two years, Arizona, Montana, and Texas made changes in their states' position in using fingerprints. In 2002, Arizona had only required use of fingerprinting for certification. By 2004, they also required fingerprinting at the time of employment. Montana did not report any requirements for fingerprinting in the year 2002, but by the year 2004, they had adopted a requirement for fingerprinting at the time of certification only. However, they still reported that they have no policy requiring fingerprinting. Texas had rejected the idea of requiring fingerprinting and had no policy in the year 2002, but by 2004, the state required fingerprinting for certification. Individuals requesting an initial certificate in Texas, for any class of certificate, are required to complete FBI fingerprinting requirements. Table 1 illustrates information from the NASDTEC Clearinghouse in 2004.

By the year 2004, there were 46 states requiring some type of background checks with the inclusion of fingerprinting. However, North Dakota, Montana, and Louisiana all report use of fingerprinting but they have no fingerprinting policy. Tennessee, Pennsylvania, Massachusetts, and Indiana had no fingerprinting requirements at all. (Since this initial study, Pennsylvania has added fingerprinting requirements.) Seventeen states required fingerprinting both at the time of certification as well as employment. Thirteen states required fingerprinting only at the time of certification, while another 16 states required fingerprinting only at the time of employment. Fingerprinting at the time of employment is usually left up to the local districts; this might explain why some states do not have actual policies concerning fingerprinting.

The request for information was sent to all states in 2002 and again in 2004. During the time of request, three questions were asked of all states: 1) Do you conduct background checks? 2) Does your state require fingerprinting? 3) If so, what year did fingerprint requirements begin? Table 2 is a summary of responses from the questionnaire. Under the column reading, "Year beginning fingerprinting requirements," not applicable (NA) will appear if the state had no requirements for fingerprinting.

Table 1: Fingerprinting Requirements of States

State	Requires Fingerprinting for Certificate	Requires Fingerprinting for Certified Employment	No Policy Requiring Fingerprinting
Alabama	X	X	
Alaska	X		
Arizona	X	X	
Arkansas	X	X	
California	X	X	
Colorado	X		
Connecticut		X	
Delaware		X	
D.C.		X	
Florida	X	X	
Georgia		X	
Hawaii		X	
Idaho	X	X	
Illinois		X	
Indiana			X
Iowa	X		
Kansas	X		
Kentucky		X	
Louisiana		X	X
Maine	X		
Maryland		X	
Massachusetts			X
Michigan		X	
Minnesota	X	X	
Mississippi		X	
Missouri	X		
Montana	X		X
Nebraska	X		
Nevada	X	X	
New Hampshire		X	
New Jersey		X	
New Mexico	X	X	
New York	X	X	
North Carolina		X	
North Dakota	X		X
Ohio	X	X	
Oklahoma	X		
Oregon	X	X	
Pennsylvania			X
Rhode Island		X	
South Carolina	X		
South Dakota		X	
Tennessee			X
Texas	X		
Utah	X	X	
Vermont	X	X	
Virginia		X	
Washington	X	X	
West Virginia	X	X	
Wisconsin	X		
Wyoming	X	X	

Of the states that responded to this 2002-2003 study, three did not conduct background checks: Louisiana, Pennsylvania, and Tennessee. Seven states did not require fingerprinting: Illinois, Indiana, Mississippi, Montana, Pennsylvania, Tennessee, and Texas. It should be noted, Louisiana did not require background checks, but fingerprinting was required. Again, during this early study, Illinois, Indiana, Montana, and Texas all conducted background checks, but did not include the requirement of fingerprinting. Of the states responding to this study, only Indiana, Pennsylvania, and Tennessee still had no fingerprinting either at the time of certification or employment; Illinois, Mississippi, Montana, and Texas all added fingerprinting by 2004.

Table 2: Requirements of Background Checks and Fingerprinting (2002 and 2004)

States Participating In Study	Conduct Background Checks?	Does State Require Fingerprinting?	Year Beginning Fingerprinting Requirements
Alabama	Yes	Yes	1997
Alaska	Yes	Yes	1990
Arizona	Yes	Yes	2003
California	Yes	Yes	9/1/51
Connecticut	Yes	Yes	1994
Delaware	Yes	Yes	1999
District of Columbia	Yes	Yes	1997
Florida	Yes	Yes	1984
Hawaii	Yes	Yes	1992
Idaho	Yes	Yes	1996
Illinois	Yes	No	NA
Indiana	Yes	No	NA
Kansas	Yes	Yes	2002
Kentucky	Yes	Yes	1998
Louisiana	No	Yes	1992
Maine	Yes	Yes	2000
Minnesota	Yes	Yes	1995
Mississippi	Yes	No	NA
Montana	Yes	No	NA
Nebraska	Yes	Yes	1996
New Jersey	Yes	Yes	2002
New Mexico	Yes	Yes	1998
Oregon	Yes	Yes	1993
Pennsylvania	No	No	NA
South Carolina	Yes	Yes	1983
Tennessee	No	No	NA
Texas	Yes	No	NA
Utah	Yes	Yes	1991
Vermont	Yes	Yes	2000
West Virginia	Yes	Yes	1994

Responses on Reciprocity

States were asked to provide the number of certificates issued yearly over the ten year period as well as the number and type of sanctions for each year. Each state was also asked to provide the reasons or causes for certificate sanctions over the ten year period. To answer the question concerning the use of reciprocity, data collected during the years 1995-1998 were compared to the years of 1999-2002—a four year span on either side of the beginning of reciprocity.

State Responses

Thirty states responded to the request of certificate information to this survey. They were: Alabama, Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, and West Virginia. Twelve (12) of the 30 states responding to the survey were able to provide most of the information requested. Other states provided helpful information even though it was not the requested data.

The year 1999 marked the beginning of the National Crime Prevention and Privacy Compact. This allowed states to exchange criminal records for non-criminal justice purposes and provided reciprocity among the states without charging each other for the information. Table 3 shows the total number of sanctions four years prior to reciprocity (1995-1998) and four years following reciprocity (1999-2002). This comparison illustrates that eight (8) of the 12 states increased in total sanctions following reciprocity of criminal information. Those eight states were: Alaska, Kentucky, Louisiana, Minnesota, Pennsylvania, South Carolina, Texas, and Utah.

Across the 12 states as illustrated in Table 3, sanctions totaled 1,645 in the years 1995-1998 in comparison to 2,843 sanctions in 1999-2002. This was an increase of 1,198 sanctions following reciprocity. The number of certificate sanctions increased by 73% among the 12 states. The majority of the increase was from the state of Texas and South Carolina.

Table 4 addresses the number of licensure sanctions due to the number of cases concerning sexual misconduct. Using the states that provided information for this study, seven states were able to provide all needed information to compile data to answer this question. Four of the seven states showed a decrease in sexual misconduct sanctions following reciprocity. Those four states were Alaska, California, Idaho, and Illinois. The three remaining states, Texas, Pennsylvania, and Louisiana, experienced an increase in sexual misconduct licensure sanctions following reciprocity. In fact, Texas experienced such a large increase that when looking at the total numbers of sanctions during the two different periods, the conclusion could be misleading. Among the seven states, there was an increase of 214 sanctions following reciprocity due to sexual misconduct.

Note that Texas was responsible for almost all the increase. Louisiana and Pennsylvania also show a slight increase in sexual misconduct sanctions following reciprocity. This falls in line with the data concerning the increase of all sanctions following reciprocity, found in Table 3.

A Legal Assistant from the Texas Professional Discipline/Code of Ethics Agency provided several reasons why it was believed that certificate sanctions due to sexual misconduct had increased in Texas since 1995:

Basically rules and laws have made it possible for our agency to have knowledge

Table 3: Licensure Sanctions Before and After Reciprocity

States	95-98 Total Sanctions	99-02 Total Sanctions	Change (N)
Alaska	22	25	+3
California	920	855	-65
Idaho	51	34	-17
Illinois	69	44	-25
Kentucky	107	134	+27
Louisiana	14	22	+8
Minnesota	79	173	+94
Montana	20	18	-2
Pennsylvania	97	106	+9
South Carolina	88	392	+304
Texas	138	952	+814
Utah	40	88	+48
Total	1645	2843	+1198

Table 4: Sexual Misconduct Licensure Sanctions Before and After Reciprocity

States	95-98 Total Sexual Misconduct Sanctions	99-02 Total Sexual Misconduct Sanctions	Change (N)
Alaska	12	2	-10
California	271	202	-69
Idaho	14	7	-7
Illinois	38	17	-21
Louisiana	8	15	+7
Pennsylvania	32	36	+4
Texas	92	402	+310
Total	467	681	+214

of sexual misconduct of educators. Our agency's rules require school districts to report misconduct of educators or any arrests, which became effective in 1999. Also, before 2002, applicants for certification were only required to have Texas criminal background checks. Applicants are now required to submit a fingerprint card for national background checks, which have increased the number of sanctions issued on educators. Further, since 2002, the investigation unit receives reports of educators that are Registered Sex Offenders in Texas, which increases the number of sanctions issued against educators (Personal communication, March 5, 2007).

Summary of Study

Keeping our students clear of harm's way and providing positive role models for them in and out of the classroom is just one of the many tasks and responsibilities of the State Departments of Education and school district officials. One of the easiest and earliest ways to screen for potential problems is by conducting a thorough background check; one that includes fingerprinting. Fingerprinting allows for a national criminal background check as opposed to simply a search within a specific state. In most cases when an educator has been convicted of a crime, their certificate is revoked, denied or suspended. Checking the status of an educator's certificate could also be a first step toward discovering potential concerns.

The National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse serves as a "collection agency" for information concerning certificate sanctions and background check policies. NASDTEC would like the states to report certificate sanctions monthly, however, some states report sanctions quarterly, while others report sanctions twice a year. Information obtained from the National Clearinghouse can be very useful to education jurisdictions but when there are so many differences within the information reported to the Clearinghouse, the usefulness can be questioned. Consistency in policy, terminology, and statutes is lacking which can cause weaknesses in the system. Those that have access to this information are those with membership to NASDTEC. NASDTEC's membership includes all 50 states, the District of Columbia, the United States Department of Defense Educational Activity, the Commonwealth of Puerto Rico, United States Territories, New Zealand, and Canadian Provinces and Territories. Individual school districts are not members of NASDTEC. Information can be released to school districts and other individuals seeking information by contacting the state agency that is the member such as, the Kansas State Department of Education. The member agency would have to approve the access of information and release the requested information, the information would not come directly from NASDTEC. In other words, direct access is not given.

Reciprocity of individual background checks among the states occurred in 1999, which allows the FBI to share background information (state and federal criminal behavior) about educators, nation-wide, without additional expenses, thus, making background checks an easier and more welcomed task to accomplish. Now that there is a system of reciprocity (obtainable by those agencies requesting background checks) and the data base from the National Clearinghouse (obtainable by member agencies—not school districts), it would be reasonable to assume that the number of certificate sanctions would have increased since criminal convictions could be checked from state to state through the FBI as well as certificate status checks could be conducted through the Clearinghouse.

Information gathered from this study showed that there was, indeed, an increase of certificate sanctions following the implementation of these two system changes: however, it also indicated this increase was primarily due to a few states (Texas and South Carolina). Since some states leave background checks to individual school districts, and school districts do not have direct access to the Clearinghouse or FBI information, some of the importance and effect of the database has been lost.

Conclusions

In order to share information, school districts and states must collect information. As a whole, the data collected from the 30 responding states was disappointing due to the inability of most states to provide the requested information concerning certificate sanctions. Although every effort has been employed to obtain studies through the use of the University of Kansas library systems, the Internet, conversations with FBI employees, professional educators, and various state departments of education, the data concerning certificate sanctions, the number of sanctions, types of sanctions, and reasons for sanctions were not complete. This was due mainly to the fact that every state reports disciplinary action on certificates differently, follows different statutes and practices concerning revocation, and conducts background checks in varying degrees.

The states responding to this study (Alabama, Alaska, Arizona, California, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine Minnesota, Montana, Nebraska, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and West Virginia) provided some data but only twelve (12) of these states were able to provide numbers of sanctions for the 10 years studied. Of the 12 states that provided information concerning the number of sanctions issued, eight were able to provide reasons for sanctions. One state could provide causes for sanctions over a 12 year period, but they were not available by year and, therefore, they could not be included in the study.

Nine states were able to provide the total number of certificates issued for every year of the 10 years examined, 1993-2002. This reflects the difference in technology systems used from state to state, the man-power within those divisions, the various levels of financing, or simply the priority level that different states place on such data. Some states could not provide data for causes of sanctions because they could not break the data into the categories listed. Some states kept certificate sanction data listed under different categories, while other states did not keep data on the causes of sanctions at all. Perhaps the most disappointing information received was from states such as Tennessee. Tennessee was unable to provide any information requested because of the outdated database it was still using from 1984. It also only employed one individual to handle the state revocations. This individual would have had to dig through all the hard copies and compile all the information for this study by hand. Possibly this is why Tennessee has no background check requirements and did not require fingerprinting. One has to question how efficiently and effectively a state such as Tennessee could protect the students in its classrooms. On a more positive note, the individual from Tennessee who responded to the request said she would use this study and request for certificate sanction information to provide a case for database updates. In fact, four states responded by writing that they would use the request for certificate sanction information from this study as a means to prove the need for additional data collection of this type.

For some this would mean hiring additional people, for others, it would require up-grades in technology, and for many, it simply means breaking down the information in more specific categories.

Lack of uniformity among the states is prevalent, and Shakeshaft (2004) also found there were many inconsistencies with terminology, definitions, and statutes. Every state revokes teaching certificates for its own reasons. Surely one would think that at least sexual misconduct or abuse would have similar grounds for revocation across the states, but that is not the case. Each state has its own age limitations for what is considered statutory rape; each state has its own procedures for reporting such incidents and investigating incidents; and each state interprets abuse differently—from inappropriate touching to rape. These differences currently encourage states to use the information found from the NASDTEC Clearinghouse only as a starting point. Once certificate sanction information is obtained through the NASDTEC Clearinghouse, states must continue the investigation due to policy differences. As an individual from the District of Columbia reported, cultural differences from state to state vary greatly and what one state will revoke a certificate for, another state might simply suspend for a limited time. He also said that in some cases it might be more important to fill the classroom with a teacher rather than worry about something like a breach of contract from some other district or state.

Perhaps one of the biggest differences among the states was the reporting requirements of sexual misconduct accusations. When educators are convicted of a crime, it is much easier to follow procedures and act accordingly, however, prior to conviction is accusation or hear-say. Accusations from students against adult educators are difficult for students to make for various reasons. When accusations are made some districts do a good job at following up and following through but others do not. Many times these educators involved in sexual misconduct cases are either dismissed as inaccurate accusations or some educators voluntarily surrender just to make “it” go away. A few states do not allow accusations or convictions to be dropped at this point. States such as Kansas and Texas require school districts to report sexual misconduct accusations or convictions and any arrests to the state agency responsible for overseeing professional practices. Many states have no such requirement.

The information requested for this study does not expose all the differences between states, but it does indicate that one must be leery interpreting data when it is understood that state statutes, state reporting, and data collection vary so greatly. Another example indicating a lack of uniformity is the requirement for background checks. Most states conduct some sort of background check, although not all states require background checks or fingerprinting at the state level. Some states leave the responsibility of background checks and fingerprinting to the local school districts. This study found that in 2002-2003, three of the 30 responding states did not conduct background checks and seven of the 30 states did not require fingerprinting. Six of the states studied collected fingerprints both at the time of certification and at the time of employment. However, four states required fingerprints only at the time of certification and six required fingerprinting at the time of employment only (some states did not respond to that question). The most recent information reported by the National Clearinghouse in 2005 shows all but three states required fingerprinting at some time or another (Pennsylvania added the fingerprint requirement in 2005).

A representative from Maine’s Department of Education called after receiving the request for certificate sanction information for this study. Although she was unable to provide much information for the study, she did visit about this topic, and at one point said, “We have people that call and ask if we require fingerprinting for background checks, when I tell them ‘yes’ they hang up and I’m sure we never hear from them again” (Personal communications, 2002). Those states that do not have the deterrent of fingerprinting might eventually see those inquiring individuals at the doorstep of their public schools.

Recommendations

Perhaps the most significant lesson learned through this study was the fact that it was a bit premature. Through this process, however, it has become evident that the study is relevant and needs to be repeated in about five years, provided states begin to collect data more efficiently. Certainly the lack of data collected by each state tells a story in and of itself. In fact, the current data available from NASDTEC showed the dramatic variance in their data (or lack of information from states) as did the data collection in this study. However, the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse indicated that they are going to track the same type of data this study attempted to collect. Possibly through the collection of data from NASDTEC, terminology will become more consistent and states will begin to keep data in a similar form. The first recommendation of this study would be that the NASDTEC Clearinghouse takes a leadership role. If states are to be members of this national data collection system, NASDTEC needs to provide a list to the member states ahead of time showing exactly what information states will be required to report, how it will be reported, and at what time it will be reported.

It is clear through the literature that criminals, particularly sexual abusers, slip through the cracks and are still allowed in schools. It has been specifically proven that sexual offenders move from town to town and state to state (O'Hagan & Willmsen, 2003, Shakeshaft, 2004; The Arizona Republic, 2003). Also the literature indicates that, many educator sexual abusers are repeat offenders. Some sexual misconduct results in sanctions by state teacher certification agencies and can end in revocation of a professional license (Shakeshaft, 2004). However, some sexual misconduct offenders bargain with districts, get their contract paid off, are given a good recommendation, and then are free to apply for positions in other districts. Official personnel from school districts should be required to report such incidents and even accusations to the state agency responsible for overseeing professional practices. There were 17 states that required this action of their district officials. Texas attributed this requirement among other changes as one reason they had seen such an increase in certificate sanctions from 1995 to 2002.

Shakeshaft and Cohan conducted a study in 1994 examining school district response to allegations and reported that investigative skills of school administrators were poor, if they exist at all. In addition, if a police investigation occurred, districts often failed to do their own reporting in terms of violations of district policy or Title IX requirements (Shakeshaft, 2004). There are five ways school officials are alerted to sexual misconduct allegations: formal complaints, informal complaints, observed abuse, observed suspicious behaviors, or rumors and/or anonymous reports (Shoop, 2004). Shakeshaft (2004) reported that strict policies and investigative training must be in place in school districts. She found that if school districts ignore sexual harassment of students by staff, it could place schools in situations for potential legal consequences. Therefore, a second recommendation of this study is that all states should require school officials and districts to report accusations of sexual misconduct that have been substantiated by a reasonable investigation to the police department and the state agency responsible for overseeing professional practices.

Fingerprinting has proven to

be the most accurate form of identification in background checks. In fact, in name-based checks only, false negative (reports that person as having a criminal record when he/she actually does not) or false positive (shows no criminal record when that person really has been convicted of a crime) mistakes

occur at a rate of 1 out of 16 (Interstate Identification Index Name Check Efficacy, 1999). Fingerprint checks have an accuracy rate of over 99%. Given the accuracy rate of background checks using fingerprinting, a third recommendation of this study is to require fingerprinting in all states. Flat prints (electronically taken with faster turn-around time) instead of the old “rolled” (black ink) method is preferred and recommended. In order for fingerprinting to be accepted by the remaining states that have not yet adopted the policy, a study proving the effectiveness of fingerprinting might be in order. A legal assistant from Texas said that since fingerprinting has been added to the Texas educational background checks, certificate sanctions due to sexual misconduct have increased. It would be interesting to see how many other states would agree. Two states that provided fingerprinting information as well as causes for sanctions are Idaho and Kansas. Idaho issued 11 sanctions prior to fingerprinting for reasons caused by sexual misconduct and 12 following—an increase of one. Kansas, on the other hand, issued two licensure sanctions prior to fingerprinting requirements due to sexual misconduct and 42 following the fingerprint requirements—an increase of 40. Between the two states, there is a 315% increase of sanctions due to sexual misconduct following the implementation of fingerprinting requirements. These data, and the statement from Texas are not enough data to prove a trend, but certainly it is enough to provoke further study.

This study was an attempt to collect data concerning the effectiveness of fingerprinting laws but because of the variations of laws, regulations, and data collection systems in states, it made it difficult to compare data. A fourth recommendation is for all states to define and adopt specific regulations leading to common data collection among the states.

This study was able to show the clear lack of common data that states have to offer, yet there is a preponderance of evidence showing that educators and staff with “inappropriate” pasts continue to be allowed in schools, providing for less than a safe, orderly, and trusting environment. Changes must be made. If recommendations from this study could be incorporated, those changes and improvements could be made.

Authors Note:

Individual states are constantly updating requirements; it is therefore advised that individuals check with each state teacher education licensing agency or department website for up-to-the-minute changes.

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